

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

NICK VELARDE,)	No. CV-F-04-6244 OWW
)	(No. CR-F-02-5451 OWW)
)	
Petitioner,)	ORDER DENYING PETITIONER'S
)	MOTION TO VACATE, SET ASIDE
vs.)	OR CORRECT SENTENCE PURSUANT
)	TO 28 U.S.C. § 2255
)	
UNITED STATES OF AMERICA,)	
)	
)	
Respondent.)	
)	
)	

On September 1, 2004, petitioner Nick Velarde timely filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner contends that his "sentence that was imposed was by the USDC, became illegal & unconstitutional, as well as violating my Sixth Amendment right to a Jury Trial, on 06/24/2004, when the U.S. Supreme Court filed their opinion in Blakely v. Washington, 124 S.Ct. 2531 (June 24, 2004). The USDC erred in sentencing me by considering factors not found by a jury, pursuant to Blakely."

Petitioner's motion is without merit. Petitioner pleaded guilty pursuant to a written Plea Agreement and was sentenced on September 29, 2003. Petitioner did not file a Notice of Appeal. *Blakely* does not apply retroactively to cases on collateral review. *United States v. Cruz*, 423 F.3d 1119 (9th Cir.2005), cert. denied ___ U.S. ___, 126 S.Ct. 1181 (2006); *Schardt v. Payne*, 414 F.3d 1025 (9th Cir.2005).

ACCORDINGLY, as set forth above:

1. Petitioner Nick Velarde's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 is DENIED.

IT IS SO ORDERED.

Dated: November 27, 2006
668554

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE